SONG TEIK KIM v. LINA DIMBAD; MAJLIS PEGUAM MALAYSIA (INTERVENER) & ANOTHER APPLICATION

HIGH COURT MALAYA, KUALA LUMPUR
AZIZAH NAWAWI J
[ORIGINATING SUMMONS NO: WA-17D-13-05-2017
& WA-17D-21-07-2017]
23 AUGUST 2018

LEGAL PROFESSION: *Professional discipline – Misconduct – Appeal against decision of Disciplinary Board – Solicitor and client entered into loan agreement – Solicitor borrowed money from client but failed to repay sums due – Disciplinary Committee recommended to Disciplinary Board that complainant be fined RM1,000 for professional misconduct in failing to advise complainant to seek legal advice before signing loan agreement – Disciplinary Board affirmed findings of misconduct by Disciplinary Committee but increased fine to RM50,000 – Whether Disciplinary Committee committed jurisdictional error by substituting fresh act of misconduct from original charge – Whether there was breach of natural justice – Legal Profession Act 1976*

The appellant was previously practicing as an advocate and solicitor and had acted for the respondent ('the complainant') in her insurance claim. The full settlement of the insurance claim was settled and the complainant received RM800,000. Upon receipt of the money, the appellant borrowed RM600,000 from the complainant and a loan agreement was signed between them. The complainant then lodged a complaint with the Bar Council Malaysia ('the intervener') under the Legal Profession Act 1976 that the appellant (i) stopped and failed to pay to the complainant the monthly interest of RM6,400, as agreed under the loan agreement; and (ii) owed the complainant RM500,000 which remained unpaid. The Disciplinary Committee ('the DC') recommended to the Disciplinary Board ('the DB') that the complainant be fined the sum of RM1000 for professional misconduct in failing to advise the complainant to seek legal advice before signing the loan agreement. The DB affirmed the findings of misconduct against the appellant but increased the fine to RM50,000. Hence, the present appeal by the appellant on the grounds that (i) the DB and/or the DC, in deciding that the appellant ought to have advised the complainant to seek independent advice, was never a complaint to the DB; (ii) it was not open to the DB to undertake an enquiry on matters which were not the subject matter of the complaint; (iii) the appellant was not given any opportunity to explain as to why he was not required to proffer unsolicited advice to the complainant before the complainant signed the loan agreement; (iv) the DB

acted disproportionately to the nature of the complaint in all circumstances of the case when imposing RM50,000; and (v) there had been a breach of natural justice.

Held (dismissing appeal):

(1) The complaint letter merely stated the facts of the complainant's complaints, which were not disputed by the appellant. The gist of the complaint was that the appellant had borrowed monies from the complainant and had not repaid the same. However, it was clear that the appellant had prepared the loan agreement between the parties and he did not advise the complainant to seek advice from a different lawyer. Even though the complainant did not state this clearly in her letter of complaint, she was not expected to do so as she was not a legally-qualified person but a layperson. The appellant, on the other hand, was a legally-qualified person and should have known that he should have advised the complainant to seek advice from a different lawyer. Since the DC made a finding of a misconduct that were within the scope of the complainant's complaint, the DC could not be said to have acted beyond its jurisdiction. Consequently, in affirming the DC's complaint on liability, the DB could not be said to be acting without jurisdiction. (paras 22-25)

(2) Based on the documents and the notes of evidence before the DC, the appellant had been informed of all the material ingredients and facts relating to the complaint lodged against him. The appellant had given his explanation to exculpate himself but the DC did not accept his explanation and this was affirmed by the DB. Whether the DC and the DB erred in rejecting the appellant's explanation was not for the court to consider as the court should not delve into the merits of the order made by the DC and the DB. The issue of proportionality of the sentence was also within the discretion of the DB which the court would not interfere. (paras 29-32)

Case(s) referred to:

Bar Malaysia v. Neasarani T Singara Thevar & Anor [2015] 8 CLJ 634 CA ***(refd)***

Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Bar Council Malaysia (Intervener) [2016] 7 CLJ 667 CA ***(refd)***

Majlis Peguam Malaysia v. Rajehgopal Velu & Anor [2017] 2 CLJ 493 FC ***(refd)***

R Sivabalan A Ramiah v. Neoh Lay Cheng; Malaysian Bar Council (Intervener) [2016] 5 CLJ 313 HC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, s. 103E(1)

Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994, r. 3

For the appellant - Harpal Singh Grewal, Nahvinah Selvaraj, Archana Nair; M/s AJ Ariffin, Yeo & Harpal
For the respondent - Roland Engan; M/s Roland Engan & Co
For the intervener - Colin Pereira; M/s Goh Wong Pereira

Reported by Najib Tamby

JUDGMENT

Azizah Nawawi J:

Applications

[1] There are two applications before this court:

(i) WA-17D-13-05-2017 – the appellant, Song Teik Kim's application for an order that the decision of the disciplinary board and/or disciplinary committee against the appellant, Song Teik Kim dated 15 April 2017 be set aside and that the penalty of RM50,000 be set aside.

(ii) WA-17D-21-07-2017 – the appellant, Lina Anak Dimbat's application for an order of restitution against the respondent, Siong Tek Kim.

[2] In respect of Originating Summons WA-17D-13-05-2017, the appellant's grounds of appeal are as follows:

(i) the disciplinary committee and/or disciplinary board in deciding that the appellant ought to have advised the complainant to seek independent advice was never a complaint to the disciplinary board;

(ii) it is not open to the disciplinary board to undertake an enquiry on matters which were not the subject matter of the complaint;

(iii) the appellant was not given any opportunity to explain as to why he was not required to proffer unsolicited advice to the complainant before the complainant signed the loan agreement;

(iv) the disciplinary board had acted disproportionately to the nature of the complaints and in all circumstances of the case when imposing RM50,000; and

(v) there had been a breach of natural justice.

[3] Having considered both applications and the submissions of the parties, this court had dismissed both applications with no order as to costs.

[4] The notice of appeal filed is in respect of WA-17D-13-05-2017, and therefore these grounds are limited to this case alone.

A **The Salient Facts**

[5] The appellant, Siong Teik Kim was previously practicing as an advocate and solicitor under the name and style of Messrs Murthy Song & Partners at No. 18, Jalan Bawang, Taman Cheras, Kuala Lumpur.

B **[6]** The appellant had acted for the respondent in her insurance claim, arising from the death of her husband. The insurance claim was settled and the full settlement sum of RM800,000 was paid to Universal Trustee Berhad.

[7] On the instruction of the appellant, the respondent wrote to Universal Trustee Berhad to withdraw the RM800,000.

C **[8]** Upon receipt of the money, the appellant then proceeded to borrow RM600,000 from the respondent. A loan agreement was signed by the appellant and the respondent on 11 March 2005. The appellant did not deny receiving RM600,000 and had repaid the respondent a sum of RM100,000.

D **[9]** Around June 2010, the respondent lodged a complaint with the intervener, the Bar Council Malaysia under the Legal Profession Act 1976 (the "LPA 1976").

[10] On 14 June 2013, the disciplinary board ("DB") appointed the disciplinary committee ("DC") to hear the respondent's complaint. From the E DC 'record of investigation proceedings', the DC had summarised the complaint to be as follows:

> The Complainant was a client of the Respondent in her insurance claim for the death of a late husband. Part of the settlement sum amounting to RM800,000-00 was kept with Universal Trustee (M) Sdn Bhd.
>
> F The Respondent requested the Complainant to lend him a sum of RM600,000-00 and promised to pay the Complainant monthly interest of RM6,400-00 a month commencing April 2015.
>
> The gist of the complaint is that the respondent stopped paying interest after April 2008 and still owes the Complainant the principal sum of G RM500,000-00 which remains unpaid till the date of Hearing of the complaint.

[11] The DC heard the complaint on 2 September 2013 and after hearing both parties, the DC, *inter alia*, made the following recommendation to the DB:

H
> The committee is of the view that at the time the sum of RM600,000.00 was paid to the Respondent by the Complainant, she was no longer a client of the Respondent, hence there was no solicitor-client relationship in existence.

I

> Nevertheless, bearing in mind, that the Complainant still relies on the Respondent for advice in handling her monies, the Respondent still has influence over the Complainant and the Respondent should have asked the Complainant to obtain legal advice from another solicitor before entering into the loan agreement with the Complainant.
>
> *By failing to ask the Complainant to seek legal advice before signing the Loan Agreement, the Respondent has failed to conduct himself in a professional manner, knowing full well that there is a conflict of interest since he is a Borrower and at the same time a former solicitor to the Complainant who has trusted him.*
>
> …
>
> The committee recommends to the Board that the Respondent be fined the sum of RM1000.00 for professional misconduct in failing to advise the Complainant to seek legal advice before signing the Loan Agreement. (emphasis added)

[12] The DB, having considered the report of the DC, had affirmed the findings of misconduct against the appellant. However, the DB had increased the fine to RM50,000.

[13] Hence, the appellant filed this appeal pursuant to s. 103E(1) of the LPA 1976.

The Findings Of The Court

Issue – Jurisdictional Error (Grounds i & ii)

[14] The appellant's main complaint is that by substituting a fresh act of misconduct from the original charge, the DC had committed a jurisdictional error.

[15] The appellant's contention is that from the summary of the complaint, the DC was investigating the following complaint:

> The gist of the complaint is that the respondent stopped paying interest after April 2008 and still owes the Complainant the principal sum of RM500,000-00 which remains unpaid till the date of Hearing of the complaint.

[16] And after the investigations, the DC made the following findings:

> The committee is of the view that at the time the sum of RM600,000.00 was paid to the Respondent by the Complainant, she was no longer a client of the Respondent, hence there was no solicitor-client relationship in existence.

[17] Hence, the appellant takes the position that despite making a finding that there no longer exists a 'solicitor-client' relationship, the DC takes the view that the appellant was guilty of misconduct as the appellant had failed to advise the respondent to seek legal advice from another solicitor before

entering into the loan agreement with the appellant. The appellant therefore submits that since the DC had substituted a fresh charge of misconduct, namely failure to advice the respondent to seek legal advice from another solicitor before entering into the loan agreement with the appellant, instead of the original charge of failing to pay the loans given by the respondent, the DC had committed a jurisdictional error because the DC had substituted a fresh charge of misconduct, from the original charge.

[18] The appellant relied on the case of *R. Sivabalan A Ramiah v. Neoh Lay Cheng; Malaysian Bar Council (Intervener)* [2016] 5 CLJ 313; [2017] 7 MLJ 587, where the High Court held as follows:

> Whether The DB Had Exceeded Its Jurisdiction?
>
> [45] *The original complaint preferred against the appellant was that he had cheated and colluded to procure profit.* The DB however, found the appellant liable as follows:
>
> > The Board found liability on the Respondent's (the Appellant in this appeal) part for *conduct unbefitting of an Advocate and Solicitor in that he had failed to ensure that the title passes to the Complainant,* who had settled the full purchase price before releasing the purchase price to his client. He had acted in a transaction with unusual terms where the purchase price was to be paid in full advance to his client, the vendor. The purchase price of RM45,000.00 was paid through him. There were no safeguards to the purchaser. He released the money in stages to his client although aware the property was caveated. In the end, the purchaser although parting fully with purchase money, got nothing. (emphasis added)
>
> [46] *It is evident that the two charges levelled against the appellant was totally different in nature from each other. …*
>
> [47] *It is clear from the above pronouncement that the DB only acts on a complaint that is made or referred to it. Therefore, it was not the function of the DB to investigate upon matters and deliberate or decide upon charges unrelated to the complaint.* (emphasis added)

[19] Another case that the appellant relied on is the decision of the Court of Appeal in *Bar Malaysia v. Neasarani T Singara Thevar & Anor* [2015] 8 CLJ 634, where the court made similar findings, that is the findings of the DC has nothing to do with the original charge against the lawyer. The court held as follows:

> [3] In the instant case, the learned High Court Judge had written a 20-page judgment, setting out the facts and reasons for setting aside the order of DB. *The central issue in the judgment and that appeal was that the respondents were investigated by the Disciplinary Committee for a particular complaint lodged by two complainants relating to withholding of documents and*

falsification of power of attorney. The complaints of the complainant had nothing to do with the respondents facilitating a money lending transaction. However, the DC concluded that the respondents had facilitated a money lending transaction. This conclusion the learned trial judge in an articulate judgment says is bad in law. His Lordship observed:

> *There is merit in the complaint by the appellants that the DC had waded into a territory which it was not constituted to ultimately rule upon.* The jurisdiction of the DC, just like any other *quasi*-judicial bodies, is always a limited one. Its purpose had been to determine the complaints as lodged by the complainants against the appellants. (emphasis added)

[20] I have no issue with the above decisions. However, the latest position can be found in the decision of the Federal Court in *Majlis Peguam Malaysia v. Rajehgopal Velu & Anor* [2017] 2 CLJ 493; [2017] 1 MLJ 596 where the court held as follows:

> **Second Issue: Whether Findings Of The DC And DB Fall Within The Scope Of The Complaint**
>
> [51] This issue was touched upon by the Court of Appeal in its judgment. In para. 17 of its judgment, the Court of Appeal ruled as follows:
>
> In this instance, the DC was appointed to conduct an inquiry into the Complaint pursuant to s. 103B of the LPA 1976. The appellant was exonerated of the Complaint of fraud against him. The finding that the appellant had acted unprofessionally in attesting the signatures in question was not the subject matter of the Complaint. In our view, the DC had acted outside the terms of power granted to it, which is to inquire into the Complaint of fraud. The DC's finding that the appellant is guilty of misconduct was made for an extraneous purpose … Accordingly, we are constrained to hold that the DC's decision is null and void for illegality.
>
> [52] Learned counsel for the appellant in his written submissions before us submitted as follow:
>
> *The findings and recommendation made by the DC and the making of the DB Order were within the scope of the Complaint as they arose from facts based on the Complaint, which were put to and admitted by R1.*
>
> The Court of Appeal erred in finding that the unprofessional manner in which R1 attested the signatures on the Form 14A was not the subject matter of the Complaint.
>
> Similarly, although the DC found that there was insufficient evidence to prove that R1 had intentionally participated in the fraud, the undeniable fact remains that R1 had attested the Form 14A without the presence of R2's late mother and Ponnamah.

A [53] *In order to appreciate and decide on this issue, it is necessary to refer to and read the full contents of the letter of Complaint in question.*

[54] The *letter of Complaint in itself, does not contain the word "fraud"* although the word was used throughout the proceedings right from the beginning by counsel as well the courts below. The gist of the Complaint as can be
B gathered and understood from the full text of the letter is that, the first respondent as an advocate and solicitor (in its original text) "telah melakukan satu penipuan dalam menyaksikan tandatangan ibu saya (Maheswari a/p Veerapoo) dan Ponnamah a/p Chinniah bagi pindahmilik ke atas hartanah tersebut di atas ... Dalam borang tersebut, dinyatakan bahawa tarikh beliau menyaksikan Ponnamah a/p Chinniah dan ibu saya
C menandatangani borang pindahmilik tersebut adalah pada 4 Mac 2002. Sedangkan pada masa itu, ibu saya telah meninggal dunia. Beliau meninggal dunia pada 10 April 1999, manakala Ponnamah a/p Chinniah tersebut pada bila-bila masa tidak pernah menandatangani borang pindahmilik tersebut ... maka peguam V Rajegopal tersebut telah melakukan satu penipuan bahawa beliau telah menyaksikan Ponnamah
D a/p Chinniah dan si mati menandatangani borang pindah milik tersebut". *In short, the Complaint was that the first respondent as an advocate and solicitor had attested the relevant Form 14A for the transfer of the land in question without the presence of the late Mdm Maheswari a/p Veerapoo and Mdm Ponnamah a/p Chinniah.* The 'penipuan' mentioned in that letter clearly refers to that conduct of the first respondent.

E

[55] *The above Complaint or allegation was not disputed by the first respondent*. He admitted attesting the relevant Form 14A without the presence of the two vendors and also admitted that he had acted negligently in the circumstances. His only excuse was that he did so in trust and reliance of his freelance staff, one Rengasamy @ Balasundram a/l Veerapan,
F whom he had known and trusted for the past ten years.

[56] *We therefore agree with learned counsel for the appellant that the findings and recommendations made by the DC and the making of the DB order that the first respondent was guilty of conduct which is unbefitting of an advocate and solicitor under s. 94(3)(o) of the LPA in attesting the said Form 14A without the presence*
G *of the vendors were within the scope of the Complaint. The Court of Appeal erred in finding that the first respondent's conduct which the DC found to fall under s. 94(3)(o) of the LPA was not the subject matter of the Complaint and that the DC had acted outside the terms of power granted to it, which was to inquire into the Complaint of fraud. Therefore, that finding cannot stand.* (emphasis added)

H **[21]** Therefore, the issue here is whether the DC has made a finding of misconduct that were within the scope of the respondent's complaint as they arose from facts based on the complaint, which were not disputed by the appellant.

I

[22] In the present case, we must take note that the complaint letter written by the respondent was not written by a legally qualified person, but by a layperson. The complaint letter merely stated the facts of the respondent's complaints, which were not disputed by the appellant. The gist of the complaint is that the appellant had borrowed monies from the respondent and had not repaid the same.

[23] However, it is clear from the facts that the appellant had prepared the loan agreement between the parties. In the notes of evidence before the DC, the appellant gave the following evidence:

> 2. I prepared a friendly loan agreement to document the transaction I entered with the Complainant. I tried to locate the Loan Agreement but despite my efforts I have not been able to do so. I could have misplaced the document while moving office.
>
> 3. **I prepared a Loan Agreement between the Complainant and me.** The Complainant put her thumbprint to the Agreement witnessed by my secretary. The Loan Agreement was witnessed by the Complainant's son-in-law and two other persons who came with them.
>
> 4. **The Complainant was not legally advised by another lawyer for this loan transaction. I did not tell them to seek advice from a different lawyer since her son-in-law could understand the transaction.** (emphasis added)

[24] Therefore, the undisputed fact is that when the appellant prepared the loan agreement with the respondent, he did not advice the respondent to seek advice from a different lawyer. Even though the respondent did not state this clearly in her letter of complaint, she is not expected to do so as she is not a legally qualified person. On the other hand, the appellant as the legally qualified person, should have known this and that he should have advised her to seek advice from a different lawyer. From his evidence before the DC, the appellant was equally appraised of this fact, but his excuse is that the respondent's "son-in-law could understand the transaction".

[25] I am of the considered opinion that since the DC has made a finding of a misconduct that were within the scope of the respondent's complaint as they arose from facts based on the complaint, which were not disputed by the appellant, the DC cannot be said to have acted beyond its jurisdiction. Consequently, in affirming the DC's finding on liability, the DB cannot be said to be acting without jurisdiction.

Issue – Breach Of Natural Justice (Grounds iii & v)

[26] With regards to the issue on a breach of natural justice, the appellant submits as follows:

E. Breach of Natural Justice

31. From the letter of 24.3.2017, it is clear that the Disciplinary Board intended to proceed to consider a complaint regarding the loan by the Respondent to the Appellant and not the complaint on which the Disciplinary Committee furnished its recommendation.

32. It is our submission that in a situation where the Disciplinary Board intends to consider a charge other than the original charge, it is incumbent on the Disciplinary Board to invite the Appellant to properly defend and meet the case alleged against.

[27] On the issue of breach of natural justice, the Federal Court in *Majlis Peguam Malaysia v. Rajehgopal a/l Velu & Anor (supra)* made the following findings:

[32] The rules of natural justice in disciplinary proceedings should not be governed by the adversarial system of justice of criminal courts but should be inquisitorial or investigatory in nature. Inquisitorial or investigative proceedings are not inconsistent with the rules of natural justice (see: Federal Court's decision in *Lembaga Jurutera Malaysia v. Leong Pui Kun* [2008] 6 CLJ 93; [2009] 2 MLJ 36).

[33] It is a trite principle that a Disciplinary Committee of a professional body is entitled to conduct its disciplinary hearing in respect of a member of the body in whatever way it deems appropriate provided that the method or manner it adopts is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned.

…

[35] In the present case, we agree that the first respondent was entitled to know the details of the allegations made against him in the letter of Complaint at the earliest stage, ie, before the Investigative Tribunal started its investigation or inquiry. This would enable the first respondent to prepare his explanation and later to be heard at all stages of the proceedings thereafter. The statements in the letter of Complaint must convey with sufficient clarity and certainty on the nature of all the allegations made against him. The first respondent must be able to meet every relevant ingredient of the Complaint and must be given opportunity to contradict them.

[36] In *Lau Keen Fai v. Lim Ban Kay* [2011] 3 CLJ 213, the High Court held:

(1) The LPA does not provide specifically that the DC is required to frame a charge. Thus an omission to frame a formal charge would not amount to a breach of the LPA. There was no requirement that it ought to be framed in any particular form or that it ought to take the form of a charge framed in a criminal

proceeding. What was essential was that the person against whom the misconduct was alleged was supplied with sufficient material particulars to enable him to meet the allegation. Herein, all the requirements of a charge were found in the letter of Complaint that the DB had forwarded to the appellant. The appellant had sufficient notice of the Complaint against him. Despite the absence of a formal charge the appellant was able to meet the Complaint lodged against him. The absence of a charge did not occasion any procedural unfairness or a breach of the rules of natural justice as the appellant had not been deprived of the opportunity to contradict the Complaint.

We agree with the above.

[37] *In considering whether there was any prejudice or denial of natural justice to the first respondent, the court is to look at the substance, rather than the form, to determine whether the first respondent had been informed of all the material ingredients and facts relating to the Complaint lodged against him.* It does not necessarily mean that it must only be by way of a formal charge framed against him. *The first respondent needed to be informed sufficiently of the facts and particulars of the misconduct complained of to enable him to explain and exculpate himself. That is his right and it forms an integral part of the rules of natural justice.*

[38] The relevant facts and material particulars that need to be informed to the first respondent are particulars which, if established, are capable of showing the elements of misconduct mentioned in the Complaint. In this respect, we agree with Bowen LJ in *Leeson v. General Council of Medical Education and Registration* (1889) 43 Ch D 366 where he said:

With respect to the charge made, the charge of which he has noticed, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all.

[39] Our view is that, any Complaint against an advocate and solicitor must comply with the requirements under r. 3 of the 1994 Rules which provides:

3. Contents of Complaints

(1) A complaint shall be made in writing by the complainant or his solicitor.

(2) A complaint shall contain the following:

(a) the full name, identity card or passport number and address of the complainant;

(b) the facts of the complaint;

(c) copies of any documents that the complainant proposes to rely on in support of his complaint;

(d) the signature of the complainant;

(e) the name and address of the complainant's solicitor, if any.

[40] The Complaint against the first respondent in this case fulfilled all the above requirements under r. 3 of the 1994 Rules. It was sufficient to give opportunity to the first respondent to exercise his right to be heard and to explain and exculpate himself, even though it was not presented in the form of a formal charge. Even if a formal charge is drawn up, such charge would inevitably be a regurgitation of the facts and particulars contained in the letter of Complaint.

[41] The first respondent in the present case knew fully well the details of the allegation made against him as stated in the letter of Complaint. From the records of proceedings made available to us, we find that the first respondent was represented by his counsel at all levels of the proceedings. He took part in the proceedings. Based on the details of his participation in the proceedings and his letter of explanation dated 6 July 2005, it is clear that he had sufficient notice of all the material facts of the Complaint made against him. The conduct of the first respondent's right from the beginning, was inconsistent with a person who did not have sufficient knowledge of the Complaint against him. The absence of a charge specifically framed against him did not occasion any procedural unfairness or breach of the rules of natural justice. He was not prejudiced in any manner. He was not deprived of the opportunity to contradict the Complaint against him.

[28] Applying the above principles, I am of the considered opinion that there is no issue raised in compliance with the requirements under r. 3 of the Legal Profession (Disciplinary Proceedings)(Investigating Tribunal and Disciplinary Committee) Rules 1994. Therefore, the next issue then is whether 'the appellant had been informed of all the material ingredients and facts relating to the complaint lodged against him'. The appellant 'needed to be informed sufficiently of the facts and particulars of the misconduct complained of to enable him to explain and exculpate himself. That is his right and it forms an integral part of the rules of natural justice.'

[29] In the present case, from the documents and the notes of evidence before the DC, I find that the appellant had been informed of all the material ingredients and facts relating to the complaint lodged against him. In his evidence, he had admitted that he had prepared the loan agreement between

him and the respondent, and that he had not advised the respondent to seek advice from a different lawyer since the respondent's son in law could understand the transaction.

[30] Therefore, I find that the appellant was informed of the facts and the particulars of the misconduct, and that he had given his explanation to exculpate himself. However, the DC did not accept his explanation and this was affirmed by the DB. In para. [15] of his written submission, the appellant said this:

> 15. Furthermore, the Disciplinary Committee erred in not accepting the explanation of the Appellant that he did not ask the Respondent to seek advice from another lawyer because the Respondent's son in law and two other persons were present when the transaction took place and the son in law of the Respondent understood the transaction.

[31] As to whether the DC and DB have erred in rejecting his explanation is not for this court to consider, as this court should not delve into the merits of the said order made by the DC and the DB. In *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Bar Council Malaysia (Intervener)* [2016] 7 CLJ 667, the Court of Appeal held as follows:

> It is well settled that (a) as a general rule, the policy is not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession … (b) all that is required is that the disciplinary body acts fairly in carrying out its duties, and the hearing conducted thoroughly with due deliberation and understanding given to the facts of the complaint …

[32] On the issue of proportionality of the sentence, this is within the discretion of the DB which this court will not interfere.

[33] With regards to the other issues raised by the appellant, these are not the grounds relied on in the originating summons and are therefore not considered by this court.

Conclusion

[34] Premised on the reasons enumerated above, I find no merit in the appeal and the appeal is dismissed with no order as to costs.